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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/252,574	02/18/99	WALKER	J 3553-4018

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TM11/0727

EXAMINER	
ROSEN, N	
ART UNIT	PAPER NUMBER

2165

DATE MAILED: 07/27/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

TM11/0727

MORGAN & FINNEGAN LLP  
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NEW YORK NY 10154

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/252 574	02/18/99	039	ROSEN, N	2165 07/27/01
First Named Applicant	WALKER, 35 USC 154(b) term ext. = 0 Days			

TITLE OF  
INVENTION

SYSTEM AND METHOD FOR ALLOCATING BUSINESS TO ONE OF A PLURALITY OF  
SELLERS IN A BUYER DRIVEN ELECTRONIC COMMERCE SYSTEM

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
2 3553-4018	705-026 0000	175	UTILITY	YES	\$620.00	10/29/01

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT.  
PROSECUTION ON THE MERITS IS CLOSED.**

**THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS  
APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.**

**HOW TO RESPOND TO THIS NOTICE:**

**I. Review the SMALL ENTITY status shown above.**

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- A. Pay FEE DUE shown above, or
- B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

**II. Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.**

**III. All communications regarding this application must give application number and batch number.  
Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.**

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

PATENT AND TRADEMARK OFFICE COPY

# Notice of Allowability

Application No.

09/252,574

Examiner

Nicholas D. Rosen

Applicant(s)

WALKER ET AL.

Art Unit

2165

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed June 4, 2001.
2. ☒ The allowed claim(s) is/are 2-25 and 29-43.
3. ☒ The drawings filed on 24 May 1999 are acceptable as formal drawings.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION.** This three-month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.136(a).

6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
7. ☐ Applicant MUST submit NEW FORMAL DRAWINGS
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE / SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

### Attachment(s)

- |   |   |
|---|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____  |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. <u>4.10</u> . | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material      | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|   | 9 <input type="checkbox"/> Other  |

Claims 2-25 and 29-43 have been examined.

***Drawings***

The corrected or substitute drawings were received on May 24, 1999. These drawings have been approved by the draftsman.

**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with attorney Walter Hanchuk on July 25, 2001.

The application has been amended as follows: In claim 5, the third line is hereby amended from "identifying one of the at least two sellers as a priority seller; and" to "thereafter identifying one of the at least two sellers as a priority seller; and".

In claim 32, the second line is hereby amended to insert "a" between "satisfy" and "conditional".

In claim 32, the third line is hereby amended from "offer;" to "offer before  
Chand. identifying one of the at least two sellers as a priority seller;".

***Allowable Subject Matter***

Claim 5 and its dependent claims 2-4, 6-8, 11, and 13-16 are allowed.

Claim 32 and its dependent claims 29-31, 33-35, 38, and 40-43 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Hensley, discloses an allocation method in a buyer-driven system, comprising: identifying one of at least two sellers as a priority seller; and providing the priority seller with a first look opportunity to satisfy a conditional purchase offer. However, neither Hensley nor any other prior art of record teaches or reasonably suggests determining which of at least two sellers could satisfy a conditional purchase offer before identifying one of the at least two sellers as a priority seller.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 9 and 36 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Hensley, discloses an allocation method in a buyer-driven system comprising: identifying one of at least two sellers as a priority seller, and providing the priority seller with a first look opportunity to satisfy a conditional purchase offer. However, neither Hensley nor any other prior art of record teaches or reasonably suggests that identifying one of at least two sellers as a priority seller includes determining a number of first look opportunities due to the at least two sellers;

determining a number of first look opportunities given to the at least two sellers; and identifying one of the at least two sellers with the largest deficiency between opportunities given and opportunities due as the priority seller. It is known in general to have people take turns, with the goal that each receive his fair share, but a detailed application to allocating first look opportunities in a buyer driven system is not known.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 10 and 37 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Hensley, discloses an allocation method in a buyer-driven system comprising: identifying one of at least two sellers as a priority seller, and providing the priority seller with a first look opportunity to satisfy a conditional purchase offer. However, neither Hensley nor any other prior art of record teaches or reasonably suggests that identifying one of at least two sellers as a priority seller includes determining a percentage of first look opportunities due to the at least two sellers based on an adjusted market share; determining a percentage of first look opportunities given to the at least two sellers; and identifying one of the at least two sellers with the largest deficiency between percentage of first look opportunities given and percentage of first look opportunities due as the priority seller. It is known in general to have people take

turns, with the goal that each receive his fair share, but a detailed application to allocating first look opportunities in a buyer driven system is not known.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 12 and 39 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Hensley, discloses an allocation method in a buyer-driven system, comprising: identifying one of at least two sellers as a priority seller; and providing the priority seller with a first look opportunity to satisfy a conditional purchase offer. However, neither Hensley nor any other prior art of record teaches or reasonably suggests that identifying one of at least two sellers as a priority seller includes: determining a market share for each of the at least two sellers; and identifying one of the sellers having the largest market share that could also satisfy the conditional purchase offer as the priority seller.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 17-25 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Hensley, discloses identifying a seller as a priority seller, providing that seller with a first look opportunity to satisfy a purchase offer, identifying another seller as a second look opportunity seller, and, at least by implication, searching the market to determine which of a plurality of sellers can satisfy a conditional purchase offer. However, neither Hensley nor any other prior art of record teaches or reasonably suggests identifying a seller as a first look opportunity seller based on relative market share in a relevant market and number of first look opportunities provided as compared to number of first look opportunities due.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### ***Terminal Disclaimer***

The terminal disclaimer filed on July 9, 2001, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 5,794,207 has been reviewed and is accepted. The terminal disclaimer has been recorded.



**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Verba et al. (U.S. Patent 6,236,977) disclose a computer implemented marketing system. Fisher et al. (U.S. Patent 6,243,691) disclose a method and system for processing and transmitting electronic auction information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen whose telephone number is 703-305-0753. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-1396 for regular communications and 703-308-1396 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

*Nicholas D. Rosen*  
Nicholas D. Rosen  
July 27, 2001

  
WYNN COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100